

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

TIMOTHY ANDERSON,)	
)	
Petitioner,)	
)	
v.)	No. 4:18 CV 1082 RWS
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

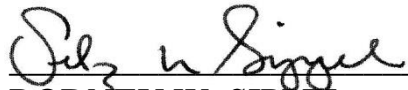
This matter is before the Court on petitioner’s motion for leave to conduct discovery.¹ Petitioner’s request to obtain discovery is premature and will be denied. The Court must first make an initial inquiry into whether petitioner’s § 2255 motion can be resolved without holding an evidentiary hearing and allowing discovery. The Court must hold an evidentiary hearing to consider claims in a § 2255 motion “[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief.” *Shaw v. United States*, 24 F.3d 1040, 1043 (8th Cir. 1994) (alteration in original) (*quoting* 28 U.S.C. § 2255). Thus, a petitioner is entitled to an evidentiary hearing “when the facts alleged, if true, would entitle [the movant] to relief.” *Payne v. United States*,

¹ Although petitioner’s motion refers to Rule 6 of the Federal Rules of Criminal Procedure, the motion is more appropriately made under Rule 6 of the Rules Governing Section 2255 Proceedings.

78 F.3d 343, 347 (8th Cir. 1996) (*quoting Wade v. Armontrout*, 798 F.2d 304, 306 (8th Cir. 1986)). The Court may dismiss a claim “without an evidentiary hearing if the claim is inadequate on its face or if the record affirmatively refutes the factual assertions upon which it is based.” *Shaw*, 24 F.3d at 1043 (*citing Larson v. United States*, 905 F.2d 218, 220–21 (8th Cir. 1990)). The Court has not yet had the opportunity to assess whether the facts alleged by petitioner, if true, would entitle him to relief. Thus, the Court will deny petitioner’s motion for leave to conduct discovery at this time. After receiving petitioner’s traverse, which is due on December 3, 2018, the Court will be able to determine whether an evidentiary hearing and discovery is necessary.

Accordingly,

IT IS HEREBY ORDERED that petitioner’s motion for leave to conduct discovery [17] is denied.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 6th day of November, 2018.